

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 18th day of August, Two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Mei Zhen Zhang,

Petitioner,

-v.-

No. 05-5167-ag
NAC

Alberto R. Gonzales,

Respondent.

FOR PETITIONER: Mei Zhen Zhang, *pro se*, Brooklyn, New York.

FOR RESPONDENT: Because the Court did not receive a brief from the respondent within fifteen days of the May 31, 2006, due date specified in the scheduling order issued on March 30, 2006, this case has been decided without the benefit of respondent's brief. *See* Local Rule § 0.29(d).

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED in part, and GRANTED and REMANDED in part.

2 Petitioner Mei Zhen Zhang, a native and citizen of China, seeks review of an August 30,
3 2005 order of the BIA affirming the March 24, 2004 decision of Immigration Judge (“IJ”) Paul
4 A. DeFonzo, which denied petitioner’s application for asylum, withholding of removal, and relief
5 under the Convention Against Torture (“CAT”), and found her application to be frivolous. *In re*
6 *Mei Zhen Zhang*, No. A97-385-057 (BIA Aug. 20, 2005), *aff’g* No. A97-385-057 (Immig. Ct.
7 N.Y. City March 24, 2004). We assume the parties’ familiarity with the underlying facts and
8 procedural history of the case.

9 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8
10 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency determination. *See,*
11 *e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362
12 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual findings, including
13 adverse credibility determinations, under the substantial evidence standard. 8 U.S.C. §
14 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

15 We find that the IJ’s adverse credibility finding was supported by substantial evidence.
16 Zhang was clearly inconsistent about whether she was living with her boyfriend, and whether that
17 was in a location other than her parents’ home. In addition, Zhang was inconsistent with her
18 father’s letter regarding when the alleged abortion took place. More notably, however, Zhang’s
19 passport indicates that she was not even in China on the date that she said she was forcibly taken
20 for an abortion. Zhang was also inconsistent about whether she knew an IUD had been inserted
21 after the abortion procedure. The IJ was reasonable in questioning Zhang’s fear of sterilization,
22 considering she was never threatened with sterilization in the hospital, or anywhere else in China.

1 Lastly, the IJ was reasonable in relying on the inconsistencies between Zhang's testimony and her
2 airport interview. *See Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 396, 399 n.8 (2d Cir. 2005).

3 Because all of the IJ's adverse credibility factors are supported by the record, and because
4 all of the factors go to major issues in Zhang's claims, the IJ reasonably denied Zhang's asylum
5 claim on adverse credibility grounds. Moreover, because Zhang's withholding of removal claim
6 is based on the same facts as her asylum claim, the IJ was reasonable in also denying this claim
7 on adverse credibility grounds. *See Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003).

8 Zhang argues in her brief that the IJ should have granted her CAT claim. Even if Zhang's
9 single sentence is sufficient to raise this issue, she did not raise any arguments regarding her
10 CAT claim in her brief to the BIA. Accordingly, her CAT claim is not exhausted and this Court
11 lacks jurisdiction to review it. 8 C.F.R. § 1252(d)(1); *see Ivanishvili v. U.S. Dep't of Justice*, 433
12 F.3d 332, 343 (2d Cir. 2006).

13 We, however, grant the petition for review and remand the case to the BIA with respect to
14 the IJ's finding that petitioner's application was frivolous. In *Yuanliang Liu v. U.S. Dep't of*
15 *Justice*, – F.3d –, 2006 U.S. App. LEXIS 17386 (2d Cir. July 11, 2006), we remanded a finding
16 of frivolousness to the BIA for the development of standards for determining when an
17 application is frivolous. Under the circumstances, and without expressing any view on the merits
18 of the issue, we deem it best to remand this case to the BIA for reconsideration in the light of the
19 standards it will develop in *Liu*.

20 Accordingly, the petition for review is DENIED in part and GRANTED and
21 REMANDED in part. The pending motion for a stay of removal in this petition is DENIED as
22 moot.

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FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____